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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JUL 29 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) CC Docket No. 95-116  
Telephone Number Portability ) RM 8535

**PETITION FOR CLARIFICATION AND RECONSIDERATION**

SBC Communications Inc., on its behalf and on behalf of its subsidiaries, ("SBC") hereby files this Petition for Clarification and Reconsideration with regard to the Third Report and Order in the above-captioned proceeding, released on May 5, 1998, and published in the Federal Register on June 29, 1998 ("Cost Recovery Order"). While SBC agrees with the general approach adopted by the Commission in its Cost Recovery Order, in certain respects clarification is required to specifically set forth the appropriate treatment to be afforded like costs. In addition, SBC requests reconsideration of the Commission's disallowance of a general overhead loading factor.

**I. THE COMMISSION SHOULD CLARIFY THE COST RECOVERY ORDER WITH REGARD TO THE APPLICATION OF END USER CHARGES IN SPECIFIED SITUATIONS.**

**A. END USER CHARGES SHOULD BE APPLIED TO FEATURE GROUP A SERVICE LINES.**

In its Cost Recovery Order<sup>1</sup>, the Commission reasons that an incumbent LEC may assess end user charges on resellers of the incumbent LEC's local service, as well as on purchasers of switching ports as unbundled network elements, because the incumbent

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<sup>1</sup> Cost Recovery Order, ¶ 146.

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LEC is providing the underlying number portability functionality. Yet, the Commission also makes the general statement that it will not allow the LECs to recover long-term number portability costs in interstate access charges.<sup>2</sup> Clarification is needed that in Feature Group A (FG-A) situations, where a LEC provides the underlying number portability functionality, a LEC can assess an end user charge even though the service is obtained through an access tariff.

It is apparently the Commission's intent that all line side services provided by a LEC where a LEC provides number portability functionality are eligible to be billed the end user charge.<sup>3</sup> Although FG-A is by definition an access service, it remains a line side connection. FG-A allows a carrier to originate calls anywhere in a LATA and pay for these calls at access transport mileage rates in lieu of toll charges. Since the LEC performs the underlying number portability functionality, it should be allowed to recover its costs for providing this function through a related end user assessment.

**B. A SINGLE END USER MONTHLY CHARGE SHOULD BE ASSESSED FOR EACH PBX AND PLEXAR TRUNK.**

In the Cost Recovery Order<sup>4</sup>, the Commission allows incumbent LECs to assess one monthly number-portability charge per line, except with regard to PBX trunks which are to be individually assessed a charge equal to nine monthly number portability charges. The rationale advanced by the Commission to support this conclusion is that a PBX trunk

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<sup>2</sup> Cost Recovery Order, ¶ 135.

<sup>3</sup> See, newly adopted 47 CFR § 52.33 (a)(1)(A). The one exception to the general rule is with regard to lifeline services. Cost Recovery Order, ¶ 145.

<sup>4</sup> Cost Recovery Order, ¶ 145.

provides the equivalent service capacity of nine Centrex lines and that therefore, it is appropriate to assess nine times the normal Centrex charge for PBX trunks to render the offerings "competitively neutral."

The Commission's rationale in this regard is inherently flawed. A PBX trunk, like any other line side service with number portability functionality, involves a single voice path. By analogy, a single line residence or business customer can use a number of extensions to allow multiple parties or parties at multiple locations to access to a single line. Similarly, multi-line business or residence customers can utilize various types of customer premises equipment, such as a PBX or a multi-line telephone set, to enable multiple station users to share access to one or more lines. Multi-line services of this nature and single line arrangements with multiple extensions both involve the use of single voice path service lines. There is no distinction between these arrangements which would support the assessment of a multiple of nine end user charges per PBX trunk line, rather than the one end user charge per line applicable to single line arrangements with multiple extensions.<sup>5</sup> For this reason, the Commission's requirement that PBX customers pay more than one end user charge per individual voice path contradicts the Commission's objective of competitive neutrality.

Plexar systems are unique PBX-like arrangements. This service assigns separate 7 and 10 digit telephone numbers to each station in the system. A single local exchange provider must provide all of the stations in each Plexar system. The Plexar customer

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<sup>5</sup> It is notable that local exchange tariffs covering switch ports make no distinction among the various line side central office classes of service (e.g. single line, multi-line, PBX trunks, etc.) and therefore are assessed a single end user charge regardless of the previous class of service assigned to the line.

directs the carrier as to the number of trunks the customer requires. The connection of a Plexar station to the public switched network requires the station to be temporarily associated with a single voice path. Typically, there is not a one-to-one correlation between the number of available voice paths and the stations on the Plexar system; generally, there are fewer trunks than stations. As the Commission recognized in its Second Order on Reconsideration in the Access Charge Reform proceeding<sup>6</sup>, a 9/1 ratio relating the number of Plexar stations to an equivalent number of individual voice paths is an effective means for levying per-line charges under the Second Order. A similar ratio was utilized for Centrex.

By reversing the algorithm developed as part of the Access Charge Reform proceeding, the Commission has incorrectly stated the precept that formed the basis in that proceeding for its conclusion on the assessment of charges for PBX trunks and Centrex/Plexar stations. For the reasons stated above, the Commission should impose only a single end user charge upon PBX and Plexar trunks and a single end user charge per nine Centrex trunks.

## **II. THE COMMISSION SHOULD ALLOW THE INCLUSION OF OVERALL GENERAL OVERHEAD FACTORS RATHER THAN LIMIT CARRIER RECOVERY TO INCREMENTAL OVERHEADS.**

In its Cost Recovery Order,<sup>7</sup> the Commission specifically excluded the use of general overhead costs in calculating the costs ascribable to number portability. The rationale advanced by the Commission in this proceeding is that since, "carriers already

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<sup>6</sup> *In the Matter of Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd. 16606 (1997).

<sup>7</sup> Cost Recovery Order, ¶ 74.

allocate general overhead costs to their rates for other services, allowing general overhead loading factors for long-term portability might lead to double recovery." Rather, the Commission limits recovery to only those incremental overheads that a carrier can demonstrate were incurred in the provisioning of long-term number portability ("LNP").

This treatment contradicts prior Commission precedent. It has been a common practice of the Commission to include general overhead factors in developing the costs of new service elements for price cap LECs.<sup>8</sup> Indeed, Section 61.49 (f)(2) of the Commission's rules on tariffs for carriers subject to price cap regulations,<sup>9</sup> requires that each tariff filing submitted by a local exchange carrier that introduces a new service must be accompanied by cost data sufficient to establish that the new service will not recover "more than a reasonable portion of the carrier's overhead expenses."

In deviating from this accepted methodology, the Commission cites its treatment of overhead costs in the 800 Service Order.<sup>10</sup> However, the 800 database service which was the focus of that proceeding was a restructure of the 800 NXX service. Therefore, the cost methodology employed to determine its appropriate rates already included general overhead loadings. For this reason, it was logical for the Commission to only

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<sup>8</sup> See, e.g. *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Policy and Rules Concerning Rates For Dominant Carriers*, CC Docket Nos. 89-79, 87-313, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd. 4524 (1991).

<sup>9</sup> 47 CFR § 61.49 (f)(2).

<sup>10</sup> *In the Matter of 800 Database Access Tariffs and the 800 Service Management System Tariff Provision of 800 Services*, CC Docket No. 93-129, Report and Order, 11 FCC Rcd. 15227 (1996), ("800 Service Order").

include incremental increases to these loadings. In contrast, LNP is a new service offering under price cap regulation and not a restructured service of another offering. As a result, to include only "incremental overheads" as recoverable costs understates the true costs of providing LNP.

Not only is this approach by the Commission inconsistent with prior precedent, it is also inconsistent with general economic principles.<sup>11</sup> First, if an "incremental overhead cost" can be directly related to the provisioning of LNP, then by definition, it is not a common cost but rather, a direct cost (Type 2) under the Commission's cost recovery scheme.<sup>12</sup> Second, some costs classified as overheads may be common costs, which by definition, are those costs which are common to the entire array of a firm's output and unaffected by changes in the level of output of any particular good or service.

The inclusion of a general overhead factor is consistent with the Commission's expressed intent that carriers should be allowed to recover all relevant costs attributable to their provisioning of LNP. Economic efficiency typically requires that prices for services, like LNP, contribute to the recovery of these common costs through mechanisms, such as a general overhead loading factor. As the Commission has recognized;

“[O]verhead costs include, for example, the costs associated with customer operations, operations, marketing, corporate operations and land and buildings. These are costs common to a number of carrier services and generally are recovered through the rates for services.”<sup>13</sup>

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<sup>11</sup> See, Alfred Kahn and William Shew, Current Issues in Telecommunications Regulation: Pricing, 4 Yale Journal on Regulation 191 (1987).

<sup>12</sup> Cost Recovery Order, ¶ 68.

<sup>13</sup> 800 Service Order, ¶ 49, footnote 94.

Other examples of costs recovered through a general overhead factor are those involving billing systems, financial analysis, payroll, bill payment, processing inventory and tracking. Without adequately addressing these various incurred costs, a carrier is potentially denied the opportunity for a fair return in connection with its required offering of number portability. Pricing in a competitive environment by necessity entails covering such costs. Carving out an exception for number portability cost recovery may result in customers for other regulated services bearing a disproportionate share of these costs and/or shareholders being denied a proper return on their investments. In addition, this exception could prompt carriers to make inefficient decisions regarding the provisioning of LNP and other services.

**III. THE COMMISSION SHOULD DELAY THE EFFECTIVE DATE OF ITS DIRECTIVE ON SEPARATIONS UNTIL CERTAIN KEY ISSUES ARE ADDRESSED.**

Paragraph 29 of the Cost Recovery Order specifies that incumbent LECs' number portability costs will not be subject to jurisdictional separations. Paragraph 164 of the Ordering Clauses states that the "policies, rules and requirements" contained in the Cost Recovery Order were to go into effect thirty (30) days after its publication in the Federal Register. Yet, the issue of the apportionment of different types of joint costs remains to be briefed. Without a decision by the Commission on this issue, incumbent LECs cannot comply with the Commission's Order relating to the exclusion of LNP costs from separations treatment. Therefore, SBC urges the Commission to clarify that until such time as the issues on LNP costs have been decided, the incumbent LECs are under no

obligation to attempt to exclude what it would define as LNP costs from its separations process.

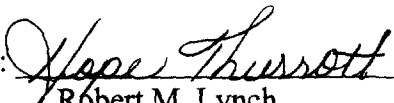
In addition, SBC is concerned that there will be ongoing costs associated with LNP queries in connection with local calls beyond the sixty (60) months permitted for cost recovery from end users. These costs, which have been designated as jurisdictionally interstate, have, pursuant to the Commission's dictates, been excluded from access charges. SBC would request the Commission also address this issue prior to requiring the implementation of its directive on separations.

#### IV. CONCLUSION

For the reasons stated above, SBC requests the Commission reconsider its Cost Recovery Order and adopt the following modifications: (1) the inclusion of general overhead factors in determining reimbursable costs; (2) the clarification that end user charges should be applied to Feature Group A lines; (3) the assessment of a single end user charge for each PBX and Plexar trunk; and (4) the postponement of the effective date of the Commission's directive regarding separations until key issues are resolved.

Respectfully submitted,

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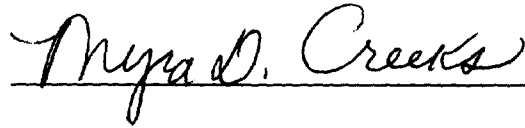
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July 29, 1998



**CERTIFICATE OF SERVICE**

I, Myra D. Creeks, hereby certify that "Petition for Clarification and Reconsideration" in CC Docket No. 95-116 have been served on July 29, 1998, to the Parties of Record.

A handwritten signature in cursive script, reading "Myra D. Creeks", is written over a horizontal line.

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